

CONSTITUTION
TOURISM COUNCIL WESTERN AUSTRALIA LTD
October 2019

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1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Constitution, unless the context requires otherwise:

AGM or Annual General Meeting means the annual General Meeting of the Company required to be held by the Company in each calendar year under the Corporations Act.

Chair means the person elected as the chairperson of the Company.

Company Secretary means the person appointed as a company secretary of the Company.

Constitution means this Constitution as amended from time to time in accordance with the Corporations Act, and a reference to a particular clause is a reference to a clause of this Constitution.

Corporations Act means the Corporations Act 2001 (Cth) as modified and amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

Deputy Chair means the person elected as the deputy chairperson of the Company.

Destination means the State of Western Australia and the Territories of Christmas Island and Cocos (Keeling) Island.

Director means a director of the Company.

Directors means, as the case requires, all or some of the Directors acting together in accordance with their powers and authority under this Constitution.

General Meeting means a general meeting of Members and includes the AGM.

Member means a member of the Company.

Objects means the objects of the Company as set out in clause 2.

Special Resolution means a resolution that must be passed by a majority of at least 75% of votes exercisable by Members entitled to vote at the relevant General Meeting in accordance with this Constitution and/or the Corporations Act.

Telecommunications Meeting means a meeting held by telephone, video, any other technology (or any combination of these technologies), which permits each Director at a meeting of Directors or each Ordinary Member at a meeting of members to communicate with any other participant.

1.2 Interpretation

In this Constitution unless the context requires otherwise:

- (a) a reference to the Company is a reference to Tourism Council Western Australia Ltd CAN 095 581 776 a company limited by guarantee;
- (b) (*presence of a Member*) a reference to a Member present at a General Meeting means the Member present in person or by proxy or Representative;
- (c) (*document*) a reference to a document or instrument includes any amendments made to it from time to time and, unless the contrary intention appears, includes a replacement;
- (d) (*gender*) words importing any gender include all other genders;

- (e) (*person*) the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (f) (*successors*) a reference to an organisation includes a reference to its successors;
- (g) (*singular includes plural*) the singular includes the plural and vice versa;
- (h) (*instruments*) a reference to a law includes regulations and instruments made under it;
- (i) (*amendments to legislation*) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by a State or the Commonwealth or otherwise;
- (j) (*include*) the words include, includes, including and for example are not to be interpreted as words of limitation;
- (k) (*signed*) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors; and
- (l) (*writing*) writing and written includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

1.3 Corporations Act

- (a) In this Constitution, unless the context requires otherwise, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.
- (b) The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

2. OBJECTS

The Objects of the Company are to:

- (a) Represent the tourism industry as the peak body in Western Australia.
- (b) Promote a wider understanding of travel and tourism as a major industry that contributes substantially to the economic and social wellbeing of the Destination.
- (c) Pursue policies that no single industry sector, association, region or Member could be expected to advance on its own and provide advocacy support on key sectoral issues.
- (d) Promote and facilitate the development and delivery of quality experiences for visitors within and to the Destination.
- (e) Bring cohesion to the travel and tourism industry and increase its recognition by developing and presenting unified positions on matters of policy.
- (f) Encourage the adoption of state policies that facilitate travel and create new business opportunities.
- (g) Pursue with state and local government programs and policies that are responsive to the

needs of travel and tourism to and within the Destination.

- (h) Promote activities that recognise that tourism is an extremely competitive and dynamic industry and one that requires flexibility and the ability to react decisively to changing market trends.
- (i) Promote the benefits of travel and tourism as a sustainable force for social, cultural and economic development and employment growth.
- (j) Assist with the dissemination of research and information relating to the business of travel and tourism.
- (k) Promote and facilitate special attention to the particular needs of tourism in regional areas.
- (l) Encourage the implementation of a national accreditation program to lift and maintain high standards for tourism businesses.
- (m) Encourage the development and maintenance of long term environmental programs to ensure sustainability of the tourism product.
- (n) To raise the profile of visitor servicing, to be the representative body for visitor centres and to facilitate educational, training and support services for visitor centres in the Destination.

3. POWERS

Solely for furthering the Objects, the Company has the legal capacity and powers of a company limited by guarantee as set out under section 124 of the Corporations Act.

4. INCOME AND PROPERTY OF COMPANY

4.1 Sole Purpose

The income and property of the Company shall only be applied towards the promotion of the Objects of the Company.

4.2 Payments to Members

No income or property will be paid or transferred directly or indirectly to any Member except for payments to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent; or
- (c) of reasonable rent for premises let to the Company by them.

5. MEMBERSHIP

5.1 Categories of Members

- (a) The Company shall have the following categories of Members:
 - (i) Ordinary Members (with subcategories Bronze, Silver and Gold);
 - (ii) Associate Members; and

- (iii) such other categories as the Board may create from time to time. Any category of Member created by the Board under this clause must not be granted voting rights.
- (b) Subject to this Constitution and the Corporations Act, the Board may determine:
 - (i) subcategories of membership of the Company;
 - (ii) any restriction in the number of Members, including the number of Members within each category or subcategory;
 - (iii) the qualifications for admission to each category and subcategory of membership; and
 - (iv) the fees and services attached to each category and subcategory of membership.

5.2 Admission of Members

A person will become a Member, and the Directors will direct the Company Secretary to record their name in the register of Members kept by the Company, only upon meeting the criteria applicable to the relevant category of membership and provided the proposed Member has submitted an application, which is accepted by the Directors, in which the proposed Member undertakes to:

- (a) be bound by this Constitution and the Policies (including Policies specific to the relevant category or subcategory of Membership);
- (b) pay the fees determined by the Board to apply to the Member; and
- (c) support the Company in the encouragement and promotion of its Objects.

5.3 Ordinary Members

- (a) Only businesses (including sole traders, partnerships and companies), incorporated associations, government bodies and authorities, and other organisations (not being individuals) operating in or involved in the tourism industry in the destination shall qualify for admission as Ordinary Members.
- (b) Ordinary Members shall have the right:
 - (i) to receive notice of and attend General Meetings of the Company;
 - (ii) the right to vote at General Meetings of the Company, with each Ordinary Member having the number of votes set out in this Constitution; and
 - (iii) to nominate persons for positions on the Board.

5.4 Associate Members

- (a) Only natural persons (individuals) (excluding business operators such as sole traders) employed or with an interest in the tourism industry in the destination shall qualify for admission as Associate Members.
- (c) Associate Members shall have the right to receive notice of and attend General Meetings of the Company, but not the right to vote.

5.5 General

- (a) The Company must keep a register of all Members in accordance with the Corporations Act.

- (b) No Member whose membership ceases has any claim against the Company or the Directors for damages or otherwise arising from cessation or termination of membership.
- (c) Membership is personal to each Member. No Member shall, or purport to, assign the rights comprising or associated with membership to any other person and any attempt to do so shall be void.
- (d) A Member must not act in a manner unbecoming of a Member or prejudicial to the Objects or interests of the Company.

5.6 Limited Liability

Members have no liability in that capacity except as set out in this Constitution.

5.7 Unpaid Fees

If any fee or money payable by a Member to the Company remains unpaid for a period of one calendar month after it becomes due, then the Member may be debarred from any service, privilege or right of memberships until payment is made.

6. CESSATION OF MEMBERSHIP

6.1 Cessation

A person ceases to be a Member on:

- (a) resignation;
- (b) death;
- (c) the termination of their membership in accordance with this Constitution;
- (d) if the Member is a body corporate, on the body corporate being dissolved or otherwise ceasing to exist;
- (e) no longer meeting the requirements for the relevant category of membership;
- (f) failure to pay membership fees within the period of 6 months after the due date.

6.2 Resignation

- (a) A Member may resign as a member of the Company by giving 14 days written notice to the Directors.
- (b) A member who resigns during a period to fees have been applied by the Company will pay full fees without any deduction, adjustment or rebate of any kind.

6.3 Forfeiture of Rights

A Member who or which ceases to be a Member shall forfeit all right in and claim upon the Company or the Directors for damages or otherwise, or claim upon its property including its intellectual property rights.

7. GENERAL MEETINGS

7.1 Annual General Meeting

AGMs of the Company are to be held:

- (a) according to the Corporations Act; and
- (b) at a date and venue determined by the Directors.

7.2 Power to convene General Meeting

- (a) The Directors may convene a General Meeting when they think fit and must do so if required by the Corporations Act.
- (b) The Ordinary Members may convene a General Meeting in accordance with the Corporations Act.

7.3 Notice of a General Meeting

- (a) Notice of a General Meeting of Members must be given:
 - (i) to all Members entitled to attend the General Meeting, the Directors, and the auditor of the Company; and
 - (ii) in accordance with this Constitution and the Corporations Act.
- (b) At least 35 days prior to the proposed date of the AGM, the Company Secretary shall request from Ordinary Members notices of motions, which must be received no less than 28 days prior to the AGM.
- (c) At least 21 days notice of the time and place of a General Meeting must be given, together with:
 - (i) all information required to be included in accordance with the Corporations Act;
 - (ii) in the case of a proposed Special Resolution, the intention to propose the Special Resolution and the terms of the proposed Special Resolution;
 - (iii) where applicable, any notice of motion received from any Ordinary Member or Director in accordance with the Corporations Act; and
 - (iv) where applicable, a list of all nominations received for positions to be elected at the relevant General Meeting.

7.4 No other business

No business other than that stated in the notice of meeting may be transacted at a General Meeting.

7.5 Cancellation or postponement of General Meeting

Where a General Meeting (including an AGM) is convened by the Directors they may, if they think fit, cancel the meeting or postpone the meeting to a date and time they determine. This clause does not apply to a General Meeting convened by:

- (a) Members according to the Corporations Act;
- (b) the Directors at the request of Members; or
- (c) a court.

7.6 Written notice of cancellation or postponement of General Meeting

Notice of the cancellation or postponement of a General Meeting must state the reasons for doing so and be given to:

- (a) each Member entitled to attend the General Meeting; and
- (b) each other person entitled to notice of a General Meeting under the Corporations Act.

7.7 Contents of notice postponing General Meeting

A notice postponing a General Meeting must specify:

- (a) the new date and time for the meeting;
- (b) the place where the meeting is to be held, which may be either the same as or different to the place specified in the notice originally convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to hold the meeting in that manner.

7.8 Number of clear days for postponement of General Meeting

The number of clear days from the giving of a notice postponing a General Meeting to the date specified in that notice for the postponed meeting must not be less than the number of clear days notice of that General Meeting required to be given by this Constitution or the Corporations Act.

7.9 Business at postponed General Meeting

The only business that may be transacted at a postponed General Meeting is the business specified in the notice originally convening the meeting.

7.10 Representative, proxy or attorney at postponed General Meeting

Where:

- (a) by the terms of an instrument appointing a representative, proxy or attorney that appointed person is authorised to attend and vote at a General Meeting on behalf of the appointing Member to be held on a specified date or at a General Meeting or General Meetings to be held on or before a specified date; and
- (b) the date for the meeting is postponed to a date later than the date specified in the instrument, then that later date is substituted for the date specified in the instrument appointing that appointed person, unless the appointing Member notifies the Company in writing to the contrary at least 48 hours before the time at which the postponed meeting is to be held.

7.11 Non-receipt of notice

The non-receipt of a notice convening, cancelling or postponing a General Meeting by, or the accidental omission to give a notice of that kind to, a person entitled to receive it, does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of the meeting.

7.12 Right to appoint representative

- (a) In accordance with the Corporations Act each Ordinary Member is entitled to appoint an individual as their representative to attend meetings of the Company and to exercise the powers

of the Ordinary Member, provided that the Ordinary Member has not appointed a proxy to attend the particular meeting under clause 7.13.

- (b) If an Ordinary Member has appointed a proxy under clause 7.13 then that proxy shall be the person who is entitled to exercise that Ordinary Member's rights as their representative for whatever meeting the said proxy applies to.
- (c) An Ordinary Member may appoint more than one representative but only one representative may exercise the Ordinary Member's powers at any one time.
- (d) In addition to each Ordinary Member's appointed representative, each Ordinary Member shall be entitled to appoint one further representative to attend meetings on their behalf but that further representative may not speak or vote on the Ordinary Member's behalf.

7.13 Right to appoint proxy

- (a) An Ordinary Member entitled to attend a General Meeting of the Company is entitled to appoint a person as their proxy to attend the meeting in their place in accordance with the Corporations Act.
- (c) A proxy may be revoked by the appointing Member at any time by notice in writing to the Company.

7.14 Form of proxy

The instrument appointing a proxy may be in form determined by the Directors from time to time provided it complies with the requirements under the Corporations Act.

7.15 Attorney of Member

A Member may appoint an attorney to act on the Member's behalf at all or any meetings of the Company.

7.16 Lodgement of proxy or attorney documents

- (a) A proxy or Attorney may vote at a General Meeting or adjourned or postponed meeting (as the case may be) only if the instrument appointing the proxy or attorney, and the original or a certified copy of the power of attorney or other authority (if any) under which the instrument is signed, are received by the Company:
 - (i) at the office, the facsimile number at the office or at such other place, facsimile number or electronic address specified for that purpose in the notice of meeting; and
 - (ii) at least 48 hours before the scheduled commencement time for the meeting or adjourned or postponed meeting (as the case may be) at which the person named in the instrument proposes to vote. The scheduled commencement time is as specified in the notice of meeting.
- (b) An undated proxy is taken to be dated on the day that it is received by the Company.

7.17 Authority given by appointment

- (a) Unless the terms of the appointment specify to the contrary, an appointment by an Ordinary Member confers authority on a proxy, attorney or representative:
 - (i) to agree to a General Meeting being convened by shorter notice than is required by the Corporations Act or by this Constitution;

- (ii) to speak to any proposed resolution; and
 - (iii) to demand or join in demanding a poll on any resolution.
- (b) Unless the terms of the appointment specify to the contrary, even if the instrument of appointment refers to specific resolutions and directs the proxy, attorney or representative on how to vote on those resolutions, the appointment is taken to confer authority:
- (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (ii) to vote on any procedural motion; and
 - (iii) to act generally at the meeting.
- (c) Unless the terms of the appointment specify to the contrary, if the instrument of appointment refers to a specific meeting to be held at a specified time or venue and the meeting is postponed or adjourned or changed to another venue, then the appointment confers authority to attend and vote:
- (i) at the postponed or adjourned meeting; or
 - (ii) at the new venue.
- (d) An appointment of a proxy may be a standing proxy, which remains valid until it is revoked by the Ordinary Member that made the appointment.
- (e) The instrument appointing a proxy may provide for the Chair to act as proxy in the absence of any other appointment or if the person or persons nominated fails or fail to attend the meeting.
- (f) The instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution.
- (g) If a proxy is appointed to vote on a particular resolution by more than one Ordinary Member and the instruments appointing the proxy direct the proxy to vote on the resolution in different ways, then the proxy must not vote on a show of hands taken on the resolution.

8. PROCEEDINGS AT GENERAL MEETING

8.1 Number for a quorum

10 Ordinary Members must be present and eligible to vote for a quorum to exist at a General Meeting.

8.2 Requirement for a quorum

An item of business may not be transacted at a General Meeting unless a quorum is present at the commencement of, and remains throughout, the General Meeting.

8.3 Quorum and time

If, within 30 minutes after the time appointed for a General Meeting, a quorum is not present, the meeting:

- (a) if convened by, or on requisition of, Members, is dissolved; and
- (b) in any other case stands adjourned to such other day, time and place as the Chair determines.

8.4 Adjourned meeting

If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, those members then present shall constitute a quorum.

8.5 Chair to preside over General Meetings

- (a) The Chair, or in their absence the Deputy Chair, is entitled to preside as Chair at General Meetings.
- (b) If a General Meeting is convened and there is no Chair, or the Chair is not present within 15 minutes after the time appointed for the meeting, or is unable or unwilling to act, the following may preside as Chair (in order of entitlement):
 - (i) a Director (or other person) chosen by a majority of the Directors present;
 - (ii) the only Director present; or
 - (iii) a representative of an Ordinary Member who is entitled to vote and is chosen by a majority of the Ordinary Members present.

8.6 Conduct of General Meetings

- (a) The Chair:
 - (i) has charge of the general conduct of the meeting and of the procedures to be adopted;
 - (ii) may require the adoption of any procedure which in his or her opinion is necessary or desirable for proper and orderly debate or discussion or the proper and orderly casting or recording of votes; and
 - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever he or she considers it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the Chair under this clause is final.

8.7 Adjournment of General Meeting

- (a) The Chair may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting.
- (b) The adjournment may be either to a later time at the same meeting or to an adjourned meeting at any time and place agreed by vote of the members present.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

8.8 Notice of adjourned meeting

- (a) It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for 30 days or more.
- (b) In that case, at least the same period of notice as was originally required for the meeting must be given for the adjourned meeting.

8.9 Questions decided by majority

Subject to the requirements of the Corporations Act and except in the case of a Special Resolution, a resolution is carried if a simple majority of the votes cast on the resolution are in favour of it.

8.10 Equality of votes

Where an equal number of votes are cast in favour of and against the resolution, the resolution is not carried.

8.11 Declaration of results

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn.
- (b) A declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minutes of the meetings of the Company, is conclusive evidence of the fact.
- (c) Neither the Chair nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded for or against the resolution.

8.12 Poll

- (a) If a poll is properly demanded in accordance with the Corporations Act or by the Chair of the meeting, it must be taken in the manner and at the date and time directed by the Chair, and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.
- (d) A demand for a poll does not prevent the General Meeting continuing for the transaction of any business other than the question on which the poll was demanded.

8.13 Objection to voting qualification

- (a) An objection to the right of a person to attend or vote at a General Meeting (including an adjourned meeting):
 - (i) may not be raised except at that meeting; and
 - (iii) must be referred to the Chair, whose decision is final.
- (b) A vote not disallowed under the objection is valid for all purposes.

8.14 Chair to determine any poll dispute

If there is a dispute about the admission or rejection of a vote, the Chair must decide it and the Chair's decision made is final.

9. VOTING

9.1 Votes of Members

- (a) No Members other than Ordinary Members shall be entitled to vote at General Meetings or in a ballot for the election of Elected Directors.

- (b) All voting will be allocated to Ordinary Members on the following basis:

<i>Category</i>	<i>Number of Votes</i>
Ordinary Member - Gold	4
Ordinary Member - Silver	3
Ordinary Member - Bronze	1

- (c) No Ordinary Member shall be eligible to vote at a General Meeting if any fees have not been paid in full at least seven (7) days prior to the General Meeting.
- (d) No Ordinary Member shall be eligible to nominate or vote in the election of Elected Directors if any fees have not been paid in full as at the close of nominations.

9.2 Resolutions not in General Meeting

- (a) If all Members entitled to vote sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is deemed to have been passed at a General Meeting of the Company held at the time on which the document was signed by the last Member entitled to vote.
- (b) For the purposes of clause 9.2(a), two or more separate documents containing statements in identical terms, each of which is signed by one or more Members entitled to vote, are deemed together to constitute one document containing a statement in those terms signed by those Members on the respective days on which they signed the separate documents.
- (c) A facsimile transmission or other form of visible or other electronic communication purported to be signed by a Member for the purpose of this clause is deemed to be a document in writing signed by that Member.

10. DIRECTORS

10.1 Number of Directors

The Company may in General Meeting determine the number of Directors provided that:

- (a) there must be not less than eight Directors and not more than twelve Directors;
- (b) subject to clause 10.1(a), not less than four Directors are to be elected by the Members under clause 10.4 ("**Elected Directors**"), and not less than four Directors are to be appointed under clause 10.8 ("**Appointed Directors**").

10.2 Eligibility

The Board may determine position or role descriptions or necessary qualifications for Director positions.

10.3 Nomination for election

- (a) Nominations for Elected Directors positions shall be in accordance with this clause and any policies made by Directors.
- (b) At least 35 days prior to the proposed date of the AGM, the Company Secretary shall request from Ordinary Members nominations (which comply with this clause) for elections to positions falling vacant.

- (c) Nominations must be received by the close of nominations, which shall be no less than 28 days prior to the AGM.
- (d) An Ordinary Member must be nominated by two (2) other Ordinary Members nominating for an Elected Director position.
- (e) No Ordinary Member shall be eligible to be a nominee, or nominator, if that Ordinary Member has not paid in full all fees due to be paid by them to the Company as at the close of nominations.
- (f) A nomination must:
 - (i) be in the form required by the Directors;
 - (ii) meet eligibility requirements established under clause 10.2 ; and
 - (iii) be signed by the two nominators and the nominee.

10.4 Election of Directors

- (a) Elections for Elected Directors positions shall be in accordance with this clause and any policies made by Directors.
- (b) Elections for Elected Director positions may be by electronic means.
- (c) No Ordinary Member shall be eligible to vote for an Elected Director if that Ordinary Member has not paid in full all fees due to be paid by them to the Company as at the close of nominations.
- (d) Elections for one or more Elected Director positions will be conducted in accordance with the following procedure on documents prepared by the Company Secretary:
 - (i) if at the close of nominations the number of eligible nominees is equal to or less than the number of positions to be filled, then no election is to take place and those eligible nominees will be taken to be elected to fill one or more of the Elected Director positions;
 - (ii) if at the close of nominations there are not sufficient nominees for the number of positions the Board shall fill up the remaining casual vacancy or vacancies;
 - (iii) if at the close of nominations there are more eligible nominees than the number of positions to be filled, a ballot will be conducted;
 - (iv) a written list of the candidates shall be made available to Ordinary Members at least 21 days prior to the AGM;
 - (v) a ballot shall be held amongst Ordinary Members prior to the AGM and the eligible nominee/s who receives the highest number of votes will be declared at the AGM and elected to fill the Elected Director positions; and
 - (vi) if two or more nominees get the same number of votes and at the relevant time there is only one Elected Director position to be filled then the Company Secretary is to draw the name of one of those nominees by lot at the AGM. That nominee is to be elected as an Elected Director.

10.5 Term of office of Directors generally

Subject to this Constitution, an Elected Director will hold office for a term of two years until the second AGM after their appointment.

10.6 Office held until end of meeting

A retiring Elected Director holds office until the end of the AGM at which that Elected Director retires but, subject to the requirement of this Constitution is eligible for re-election.

10.7 Casual vacancy in ranks of Elected Directors

- (a) The Directors may at any time appoint a person to fill a casual vacancy (as defined in clause 10.11) in the rank of the Elected Directors.
- (b) A person appointed under clause 10.7(a) holds office until the next Annual General Meeting at which time they can offer themselves for re-election.
- (c) Where an office of Elected Director becomes vacant (as defined in clause 10.11) before the first AGM in their term of office, an election of a replacement Elected Director shall take place in accordance with clauses 10.4. The term of office of the replacement Elected Director shall be for one year until the following AGM.

10.8 Appointed Directors

- (a) In addition to the Elected Directors, the Directors may themselves appoint up to four persons to be Directors because of their special business acumen and/or technical skills. These persons will be known as the “**Appointed Directors**”.
- (b) Subject to clause 10.10, an Appointed Director holds office for a term determined by the Directors not to exceed two years or until the second AGM after their appointment. The appointment will be on such other terms as the Directors determine.
- (c) The Directors may at any time appoint a person to fill a casual vacancy in the rank of the Appointed Directors on whatever terms the Directors decide.

10.9 Remuneration of Directors

A Director must not be paid for services as a Director but, with the approval of the Directors and subject to the Corporations Act, may be:

- (a) paid by the Company for services rendered other than as an ordinary Director; and
- (b) reimbursed by the Company for reasonable costs of travel and accommodation when:
 - (i) travelling to or from meetings of the Directors or the Company; or
 - (ii) otherwise engaged in the affairs of the Company.

10.10 Removal of Director

- (a) Subject to the provisions of the Corporations Act, the Company may in General Meeting by ordinary resolution remove any Director prior to the expiration of that Director’s term of office.
- (b) Unless otherwise resolved at a General Meeting, a Director removed in accordance with clause 10.10(a) cannot be re-appointed as a Director within two years of their removal.

10.11 Vacation of office

The office of a Director becomes vacant as provided under the Corporations Act or if the Director:

- (a) is removed in accordance with clause 10.10;

- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (c) resigns from office by notice in writing to the Company;
- (d) is not present at three consecutive Directors' meetings without leave of absence from the Directors; or
- (e) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Act.

11. POWERS AND DUTIES OF DIRECTORS

11.1 Directors to manage the Company

The Directors are to manage the Company's business and may exercise those of the Company's powers that are not required, by the Corporations Act or by this Constitution, to be exercised by the Company in General Meeting.

11.2 Specific powers of Directors

Without limiting clause 11.1, the Directors may exercise all the Company's powers to borrow or raise money, to charge any property or business or give any other security for a debt, liability or obligation of the Company or of any other person.

11.3 Time etc

Subject to the Corporations Act, where this Constitution requires that something be done by a particular time, or within a particular period, or that an event is to occur or a circumstance is to change on or by a particular date, the Directors may at their absolute discretion extend that time, period or date as they think fit.

11.4 Appointment of attorney

The Directors may appoint any person to be the Company's attorney for the purposes, with the powers, authorities and discretions, for the period and subject to the conditions they think fit.

11.5 Provisions in power of attorney

A power of attorney granted under clause 11.4 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

11.6 Delegation of powers

- (a) The Directors may, by resolution or by power of attorney or writing under seal, delegate any of their powers to any employee of the Company or any other person or persons as they think fit.
- (b) Any delegation by the Directors of their powers:
 - (i) must specify the powers delegated, any restrictions on, and conditions attaching to, the exercise of those powers and the period during which that delegation is to be in force;
 - (ii) may be either general or limited in any way provided in the terms of the delegation;
 - (iii) need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position; and

- (iv) may include the power to delegate.
- (c) If exercising a power depends on a person's opinion, belief or state of mind, then that power may be exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.
- (d) Any power exercised by a delegate is as effective as if it had been exercised by the Directors.

12. PROCEEDINGS OF DIRECTORS

12.1 Directors meetings

- (a) Subject to clause 12.1(b), the Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) The Directors must meet at least four times in each calendar year.

12.2 Questions decided by majority

A question arising at a Directors' meeting is to be decided by a majority of votes of the Directors present in person and entitled to vote. Each Director present has one vote on a matter arising for decision by Directors.

12.3 Chair's casting vote

The Chair of the meeting will not have a casting vote. The Chair is first amongst equals, so should encourage collegiate decision-making as opposed to voting.

12.4 Quorum

Four Directors constitutes a quorum.

12.5 Effect of vacancy

- (a) The continuing Directors may act despite a vacancy in their number.
- (b) However, if the number of Directors is reduced below the number required for a quorum, the remaining Directors may act only for the purpose of filling the vacancies to the extent necessary to bring their number up to that required for a quorum or to convene a General Meeting.

12.6 Convening meetings

- (a) The Chairman or 4 other Directors may convene a Directors' meeting.
- (b) Notice of a meeting of Directors must be given individually to each Director (except a Director on leave of absence approved by the Directors) by the Company Secretary. Notice of a meeting of Directors may be given in person, or by post or by telephone, facsimile or other electronic means.
- (c) A Director may waive notice of a meeting of Directors by giving notice to that effect to the Company in person or by post or by telephone, facsimile or other electronic means.
- (d) A person who attends a meeting of Directors waives any objection that person may have in relation to a failure to give notice of the meeting.

- (e) The non-receipt of a notice of a meeting of the Directors or the accidental omission to give notice of a meeting to a person entitled to receive notice does not invalidate anything done (including the passing of a resolution) at a meeting of Directors.

12.7 Election of Chair and Deputy Chair

- (a) The Directors may elect one of their number to be the Chair by a majority vote.
- (b) A Director elected to be Chair under clause 12.7(a), will remain Chair for the duration of their term of office as Director and shall chair any meeting of Directors unless the resolution electing a person as the Chair specifies a fixed term for the appointment
- (c) The Directors may elect one of their number to be the Deputy Chair by a majority vote.
- (d) A Director elected to be Deputy Chair under clause 12.7(c), will remain Deputy Chair for the duration of their term of office as Director unless the resolution electing a person as the Deputy Chair specifies a fixed term for the appointment
- (e) Despite clause 12.7(b) and 12.7(c), if:
 - (i) there is no person elected as Chair or Deputy Chair; or
 - (ii) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting; or
 - (iii) the Chair is unwilling to act,

the Directors present may elect one of their number to be Chair of the meeting.

12.8 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy. A facsimile transmission or other document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of clause 12.8(a) and is taken to be signed when received by the Company in legible form.
- (c) The resolution is passed when the last Director signs.

12.9 Validity of acts of Directors

Everything done at a Directors' meeting or a Committee meeting, or by a person acting as a Director, is valid even if it is discovered later that there was some defect in the appointment, election or qualification of any of them or that any of them was disqualified or had vacated office.

12.10 Directors' Interests

- (a) A Director shall declare to the Directors any material personal interest or related party transaction, as defined by the Corporations Act, as soon as practicable after that Director becomes aware of their interest in the matter.

- (b) Where a Director declares a material personal interest or in the event of a related party transaction, that Director must absent himself or herself from discussion of such matter and shall not be entitled to vote in respect of such matter unless otherwise determined by the Directors.
- (c) In the event of any uncertainty in this regard, the issue shall immediately be determined by a vote of the Directors or, if this is not possible, the matter shall be adjourned or deferred to the next meeting.
- (d) The Company Secretary shall maintain a register of declared interests.

12.11 Minutes

The Directors must cause minutes of meetings to be made and kept according to the Corporations Act.

13. TELECOMMUNICATION MEETINGS OF THE COMPANY

13.1 Telecommunication Meeting

- (a) A General Meeting or a Directors' Meeting may be held by means of a Telecommunication Meeting, provided that:
 - (i) the number of Members or Directors (as applicable) participating is not less than a quorum required for a General Meeting or Directors' Meeting (as applicable); and
 - (ii) the meeting is convened and held in accordance with the Corporations Act.
- (b) All provisions of this Constitution relating to a meeting apply to a Telecommunication Meeting in so far as they are not inconsistent with the provisions of this clause.

13.2 Conduct of Telecommunication Meeting

The following provisions apply to a Telecommunication Meeting of the Company:

- (a) all persons participating in the meeting must be linked by telephone, audio-visual or other instantaneous means for the purpose of the meeting;
- (b) each of the persons taking part in the meeting must be able to hear and be heard by each of the other persons taking part at the commencement of the meeting and each person so taking part is deemed for the purposes of this Constitution to be present at the meeting;
- (c) at the commencement of the meeting each person must announce his or her presence to all other persons taking part in the meeting;
- (d) a person may not leave a Telecommunication Meeting by disconnecting his or her telephone, audio-visual or other communication equipment unless that person has previously notified the Chair;
- (e) a person may conclusively be presumed to have been present and to have formed part of a quorum at all times during a Telecommunication Meeting unless that person has previously notified the Chair of leaving the meeting; and
- (f) a minute of proceedings of a Telecommunication Meeting is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the Chair.

14. COMPANY SECRETARY

14.1 Appointment of Company Secretary

The Chief Executive Officer shall be the Company Secretary appointed by the Directors.

14.2 Suspension and removal of Company Secretary

The Directors may suspend or remove a Company Secretary from that office.

14.3 Powers, duties and authorities of Company Secretary

A Company Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated to them by the Directors.

15. MAKING AND AMENDING POLICIES

15.1 Making Policies

- (a) The Directors may from time to time make policies:
 - (i) that are required to be made under this Constitution; and
 - (ii) which in their opinion are necessary or desirable for the control, administration and management of the Company's affairs and may amend, repeal and replace those policies.
- (b) The Company in General Meeting may amend, repeal or replace any policy made by the Directors without affecting the validity of acts or decisions made by the Directors or anyone authorised to act pursuant to that policy.

15.2 Effect of Policies

A policy made by the Directors:

- (a) is subject to this Constitution;
- (b) must be consistent with this Constitution;
- (c) when in force, is binding on all Members and has the same effect as a provision in this Constitution; and
- (d) may be overruled if a resolution to that effect is passed by the Members at a General Meeting.

16. INSPECTION OF RECORDS

A Member does not have the right to inspect any document of the Company (including registers kept by the Company) except as required by law.

17. ACCOUNTS

The Directors will cause proper accounting and other records to be kept and will distribute copies of financial statements as required by the Corporations Act. This is consistent with Chapter 2M of the Act.

18. SERVICE OF DOCUMENTS

18.1 Document includes notice

In this clause, document includes a notice.

18.2 Methods of service on a Member

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
- (c) by sending it to a facsimile number or electronic address nominated by the Member.

18.3 Methods of service on the Company

A Member may give a document to the Company:

- (a) by delivering it to the Registered Office;
- (b) by sending it by post to the Registered Office; or
- (c) by sending it to a facsimile number or electronic address nominated by the Company.

18.4 Post

A document sent by post if sent to an address:

- (a) in Australia, may be sent by ordinary post; and
- (b) outside Australia, or sent from an address outside Australia, must be sent by airmail, and in either case is taken to have been received on the second business day after the date of its posting.

18.5 Facsimile or electronic transmission

If a document is sent by facsimile or electronic transmission, delivery of the document is taken to:

- (a) be effected by properly addressing and transmitting the facsimile or electronic transmission; and
- (b) have been delivered on the business day following its transmission.

19. INDEMNITY

19.1 Indemnity of officers

- (a) This clause applies to every person who is or has been:
 - (i) a Director or Company Secretary of the Company; and
 - (ii) to any other officers, employees, former officers or former employees of the Company or of its related bodies corporate as the Directors in each case determine.

Each person referred to in this paragraph (a) is an “**Indemnified Officer**” for the purposes of this clause.

- (b) The Company shall indemnify each Indemnified Officer out of the property of the Company against:
 - (i) every liability (except a liability for legal costs) that the Indemnified Officer incurs as an Officer of the Company or of a related body corporate of the Company; and
 - (ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the Indemnified Officer becomes involved as an officer of the Company or of a related body corporate of the Company,unless:
 - (iii) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
 - (iv) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

19.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Indemnified Officer against liability that the Indemnified Officer incurs as an officer of the Company or of a related body corporate of the Company including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

19.3 Deed

The Company may enter into a deed with any Indemnified Officer or a deed poll to give effect to the rights conferred by clause 19.1 on the terms the Directors think fit (as long as they are consistent with this Constitution).

20. WINDING UP

20.1 Contributions of Members on winding up

- (a) Each Ordinary Member must contribute to the Company's property if the Company is wound up while they are a Member or within one year after their membership ceases.
- (b) The contribution is for:
 - (i) payment of the Company's debts and liabilities contracted before their membership ceased;
 - (ii) the costs of winding up; and
 - (iii) adjustment of the rights of the contributories among themselves,
 - (iv) and the amount is not to exceed \$10.00.
- (c) No other Member must contribute to the Company's property if the Company is wound up.

20.2 Excess property on winding up

- (a) If on the winding up or dissolution of the Company, and after satisfaction of all its debts and liabilities, any property remains, that property must be given or transferred to another body or bodies:
 - (i) having objects similar to those of the Company; and
 - (ii) whose constitution prohibits (or each of whose constitutions prohibit) the distribution of its or their income and property among its or their members to an extent at least as great as is imposed under this Constitution.
- (b) That body is, or those bodies are, to be determined by the Ordinary Members at or before the time of dissolution or, failing that determination, by a judge who has or acquires jurisdiction in the matter.

21. POLITICAL NEUTRALITY

The Company is non-party political and will not make any donation to any political party or candidate.